

THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO

COMPANY, et al.,

Defendants.

Miami-Dade County Courthouse
Miami, Florida

2:00 p.m.

Thursday, December 17, 1998

TRIAL - VOLUME 162

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit

Judge,

pursuant to notice.

17963

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

On behalf of Plaintiffs

DECHERT PRICE & RHOADS

ROBERT C. HEIM, ESQ.

SEAN P. WAJERT, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT

NORMAN A. COLL, ESQ.

On behalf of Defendant Philip Morris

ZACK KOSNITZKY

STEPHEN N. ZACK, ESQ.

On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER

R. BENJAMINE REID, ESQ.

On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE

RICHARD M. KIRBY, ESQ.

On behalf of Defendant R.J. Reynolds

KING & SPALDING

MICHAEL RUSS, ESQ.

RICHARD A. SCHNEIDER, ESQ.

On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

SHOOK HARDY & BACON

EDWARD A. MOSS, ESQ.

WILLIAM P. GERAGHTY, ESQ.

On behalf of Defendant Brown & Williamson

JAMES T. NEWSOM, ESQ.

On behalf of Defendant Lorillard

DEBEVOISE & PLIMPTON

ANNE COHEN, ESQ.

JOSEPH R. MOODHE, ESQ.

On behalf of Defendant The Council for Tobacco

(APPEARANCES - Continued)

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
 DAVID L. ROSS, ESQ.
 On behalf of Defendant Lorillard
 MARTINEZ & GUTIERREZ
 JOSE MARTINEZ, ESQ.
 On behalf of Defendant Dosal Tobacco Corp.
 and Tobacco Institute
 KASOWITZ BENSON TORRES & FRIEDMAN
 AARON MARKS, ESQ.
 NANCY STRAUB, ESQ.
 On behalf of Defendants Liggett Group
 and Brooke Group

17965

I N D E X

WITNESS		PAGE
Video Deposition of		
Freddy Homburger, M.D. (Continued):		17970
	E X H I B I T S	
PLAINTIFFS'	OFFERED	ADMITTED
EXHIBITS	PAGE	PAGE
None.		
	E X H I B I T S	
DEFENDANTS'	OFFERED	ADMITTED
EXHIBITS	PAGE	PAGE
None.		
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17966

1 (Whereupon, the following proceedings were
 had:)
 2 THE COURT: Okay. Have a seat. Well,
 what's
 3 the latest problem?
 4 MR. ROSENBLATT: You got the letter,
 Judge?
 5 THE COURT: Yes.
 6 MR. ROSENBLATT: I've handed it out to
 7 everybody. I apologize. Susan was here because
 of the
 8 bomb scare in the Concord Building.
 9 We're both listening to this, and we
 remember
 10 that Dr. Homburger was so feisty, and there's no
 11 feistiness here, and we realize it's our fault.
 Our
 12 designations to what they had designated were done
 ages
 13 ago, but they were never sent to the other side.
 14 What's being shown now is incredibly
 15 misleading. Our suggested solution is just show
 16 everything from here on in. We're not suggesting
 go
 17 back, but just show it.
 18 THE COURT: Even on nondesignated stuff?
 19 MR. ROSENBLATT: Yes, because it would
 take
 20 longer to try to separate out. Obviously, the
 colloquy

21 you just automatically, whatever lawyers are
objecting,
22 you take that out. But as far as what we're
proposing
23 is just go through it --
24 MR. MOODHE: This is nonsense, Judge.
25 THE COURT: I'm sorry?
17967
1 MR. MOODHE: This is nonsense, Judge.
The
2 history of this -- this deposition was played last
year
3 during the Broin trial. The original proposal
from
4 plaintiffs was just play what was played last
year.
5 What I did was I took what was played last year
and
6 just edited it down a little bit, took out some of
the
7 foundational stuff from our cross examination of
8 Dr. Homburger.
9 Now Mr. Rosenblatt realizes, number one,
they
10 never served these counter-designations. So now
they
11 want to serve it in the middle, in the middle of
12 playing it to the jury, and add all this
additional
13 stuff or just play the whole thing through. It
defeats
14 the whole purpose of sitting down and making these
15 designations.
16 We came in here with designations. They
had
17 them in their hands. They forgot to serve them.
I
18 don't know if they forgot to serve them. They
didn't
19 focus on them. This has been around a while. But
now
20 they want to play hours more of testimony after I
spent
21 time taking and focusing on what were the core
parts.
22 There's nothing feisty about Dr.
Homburger.
23 Unfortunately, the truth is, Dr. Homburger is just
24 confused and has some facts wrong, and when
confronted
25 by documents, reveals his confusion. And
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17968
1 Mr. Rosenblatt doesn't like that, doesn't like the
fact
2 that the documents that are put in front of him on
the
3 videotape show that his recollection is wrong.
4 But now, to stop in the middle -- it's
like
5 the direct examination is finished, and in the

middle
and
want
happen
the
question
time
20,
what
being
come
when
are
these
they're

6 of my cross examination, Mr. Rosenblatt stands up
7 says, gee, let's change some of the rules here; I
8 to go back and put some stuff on direct.
9 You wouldn't let that happen with a live
10 witness here, and I suggest you shouldn't let it
11 with the deposition transcript.
12 MR. ROSENBLATT: Dr. Homburger explains
13 confusion. He explains the confusion. No
14 what they're showing. He's 82 years old at the
15 this deposition is taken. They befuddle him with
16 25-year-old documents. But when the full story is
17 told, he gets angry and he explains that he knows
18 he knows and he says to counsel, he says: You're
19 very misleading. You're being very -- well, how
20 you remember this?
21 And he says: It's like you remember
22 someone spits in your face.
23 That's what I mean by feistiness. There
24 certain things he can remember very clearly. And
25 documents that he hasn't seen in 20, 25 years,

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17969
man.
your
what
this
with
taken
your
what
and
and

1 painting a picture of this confused 82-year-old
2 THE COURT: But the problem is, he's
3 witness. You've been through it before. You know
4 you wanted to show in the other case, which is
5 basically the same as what you wanted to show in
6 case.
7 MR. ROSENBLATT: I'd be very satisfied
8 what was shown in the Broin case, but now they've
9 out all the good stuff.
10 THE COURT: But now your designations on
11 transcript, given to the other side, look, this is
12 we want to use. And the other side relies on it,
13 I'm sure they smiled very much when they got it
14 said, well, that's great, we'll accept that. But

what
15 more can you expect them to do at this point?
Say,
16 whoops, I'm sorry?
17 MR. ROSENBLATT: I'm saying, whoops, I'm
18 sorry.
19 THE COURT: I just don't think that it's
fair
20 to them. It's not their problem; it's your
problem.
21 So, I'll sustain your objection to it.
22 MR. MOODHE: Thank you.
23 THE COURT: I think, Olga, you have the
24 original?
25 THE CLERK: Yes. Yes.
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17970
1 THE COURT: All right. Let's then
proceed
2 with what we've got.
3 Bring the jury out.
4 (The jurors entered the courtroom.)
5 THE COURT: All right. Let's resume.
6 Now, my understanding is we've got
another
7 hour, hour and twenty minutes of the second tape.
And
8 then, after that, there's a third tape. Is that a
full
9 tape also?
10 VIDEOGRAPHER: Your Honor, I don't know.
11 THE COURT: Partial? Well, each tape
takes
12 about two hours of testimony.
13 VIDEOGRAPHER: I think that, when I
rewound,
14 from what I saw from my eye, it was about halfway
15 through that tape.
16 THE COURT: So, that's what's ahead of
us. I
17 figured we could sit for an hour and twenty
minutes or
18 so and wait until that second tape ends before we
take
19 a break. Unless you folks need a break. If you
do,
20 sing out.
21 All right. Let's proceed.
22 (The videotaped deposition of Dr. Freddy
23 Homburger continued as follows:)
24 BY MR. RANGLES:
25 Q. Now, I believe you testified earlier
that
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17971
1 Dr. Bernfeld wasn't a trained pathologist, so he
didn't
2 know any better than to use the phrase
3 pseudoepitheliomatous hyperplasia?

4 A. Right.
5 Q. But Dr. Russfield was a trained
pathologist,
6 wasn't she?
7 A. Yes. Look. Let's quit harping on this
8 thing. It's a just a question of interpretation
of a
9 term. To somebody it means one thing and another
10 person it means another. This is one of those
loose
11 terms that are interpreted in a different way.
That
12 doesn't have any significance.
13 Q. But Dr. Russfield, in a presentation
14 regarding the conditions of the larynxes of your
15 hamsters, characterized four separate slides as
showing
16 pseudoepitheliomatous hyperplasia, hasn't she?
17 A. I don't deny that.
18 Q. And was her interpretation unreasonable?
19 A. In my opinion, it was wrong to use that
term.
20 And why I didn't correct it then, I don't know.
Maybe
21 I have formed this opinion after that.
22 Q. So it's possible that in 1973 you didn't
have
23 a strong feeling that this term was inappropriate?
24 A. It's quite possible.
25 (Fast forwarding.)

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17972
1 BY MR. RANGLES:
2 Q. I'd like to call your attention to the
3 heading about two-thirds down the page.
4 A. I have it again, pseudoepitheliomatous
5 hyperplasia. Hooray, you found another with one.
6 Q. And you also characterized that as a
7 pre-invasive carcinoma; is that correct?
8 A. Yes, I think so. If I said so, it is
true.
9 Q. Sort of for the lay person, that means
it's
10 not cancer?
11 A. Well, this is not written for the lay
person.
12 Q. I understand.
13 A. And I don't care what it means to the
lay
14 person.
15 Q. Does it mean cancer? Does
16 pseudoepitheliomatous hyperplasia mean cancer?
17 A. No. It means pre-cancer.
18 Q. Thank you. Now, Doctor, you testified
that
19 Mr. Hockett and Dr. Jacob came to your summer home
in
20 Maine in July or August in 1973; right?
21 A. Yes.
22 Q. And that the sole purpose of their visit
was

the 23 to discuss a draft paper you wanted to submit to
24 Journal of the National Cancer Institute?
25 A. Yes.
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17973
1 Q. JNCI, right?
2 A. Yes.
3 Q. There was no other purpose for that
visit?
4 A. Not as far as I remember or as far as I
knew.
5 Q. And had you sent a copy of this draft
JNCI
6 paper to CTR before the meeting happened?
7 A. Yes.
8 Q. You're sure about that?
9 A. I'm pretty sure about that.
10 Q. You claim that Mr. Jacob threatened that
you
11 would never get another penny if you didn't make
12 changes to that draft JNCI paper, right?
13 A. I don't claim it. I say he said it.
14 Q. And you also testified yesterday that no
15 legal issues were discussed at this meeting,
right?
16 A. Right.
17 Q. And there were no disputes about your
18 contract other than the interpretation of the
findings?
19 A. Right.
20 Q. Mark this Defense Exhibit 14.
21 Dr. Homburger, I have handed you what's
been
22 marked as Defense Exhibit 14. And I would like to
know
23 if you can identify this as a letter you sent to
Mr. Ed
24 Jacob on February 7th, 1973.
25 A. It appears to be, but I don't remember.
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17974
1 Q. You don't remember sending this letter?
2 A. I don't, I don't remember, but obviously
I
3 did.
4 Q. And you started that letter by saying:
I
5 have today been informed that CTR has decided not
to
6 decide on the continuation of our smoke inhalation
7 studies in Syrian hamsters until all our
histological
8 data will be available.
9 Then you go on, you say in the next
10 paragraph: To me, the indecisiveness of CTR is
beyond
11 belief and understanding, right?
12 A. Why?

13 Q. I said, is that what the letter says?
14 A. Yes.
15 COUNSEL: Objection to the form.
16 BY MR. RANGLES:
17 Q. Now, was it your understanding as early
as
18 February 7th, 1973 that it was unlikely that you
were
19 going to get any further contract funding for this
work
20 from CTR?
21 A. From this letter.
22 Q. That was obviously your understanding?
23 A. Yes.
24 Q. And you weren't happy about that, and
the
25 letter indicates that; correct?
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17975
1 A. Yes.
2 Q. This is Defense Exhibit 15.
3 Dr. Homburger, I'd like to show you what
is
4 being marked as Defense Exhibit 15. And I call
your
5 attention to the boxed section on the left, and
I'd
6 like to ask if you can identify this
advertisement.
7 A. That's probably our advertisement. It
looks
8 like it.
9 Q. This is a Bio-Research Consultants,
Inc.,
10 that is your company, correct?
11 A. Yes.
12 Q. And it's an advertisement in the Tobacco
13 Reporter in June of 1973, correct?
14 A. Yes.
15 Q. And you are offering a new technology,
it
16 says, of fresh smoke inhalation method using
inbred
17 well-defined biohamsters with either our own
patented
18 machine or the machine of your choice; isn't that
19 correct?
20 A. Yes.
21 Q. And you go on to talk about various
benefits
22 that people involved in the tobacco business could
get
23 from using your process, right?
24 A. Right.
25 Q. And at the bottom you say: For our
technical
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17976
1 bulletin or detailed information about consulting

2 services, write or phone.
3 And you give the name of your company,
4 correct?
5 A. Right.
6 Q. So you were inviting them to contact you
and
7 you'd send them more information, correct?
8 A. Right.
9 Q. Now, at the risk of belaboring the
obvious,
10 the obvious purpose of this was for you to drum up
more
11 business for your laboratory.
12 COUNSEL: Objection to the form.
13 A. Obviously.
14 COUNSEL: I'm sorry. I didn't hear the
15 question over the objection. Could you read that
back?
16 (Fast forwarding.)
17 BY MR. RANGLES:
18 Q. As a matter of fact, you started this
process
19 of trying to drum up more business for your
laboratory
20 in early 1973 about the time you realized that you
were
21 probably not going to get any more CTR contract
money,
22 correct?
23 COUNSEL: Objection to the form.
24 A. That's a coincidence. I think we were
on the
25 war path to get more jobs long before that.
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17977
1 BY MR. RANGLES:
2 Q. Now, Dr. Homburger, the ad refers to
"our own
3 patented machine."
4 A. That is not quite correct, because the
patent
5 was owned by Mr. Walton.
6 Q. That's right. You didn't own the
patent, did
7 you?
8 A. No. We never patented any of our
research
9 results.
10 Q. Actually, CTR owned the rights to that
11 machine, didn't they?
12 A. No. It was patented long before we had
13 contract by Mr. Richard Walton, who,
unfortunately, is
14 no longer alive. But it was his work and his
patent,
15 and it was dated '69.
16 Q. But it didn't belong to your lab,
correct?
17 A. No.
18 Q. Dr. Homburger -- let's have this marked
19 Defense Exhibit 16.

20 Dr. Homburger, I'm handing you what has
been
21 marked as Defense Exhibit 16. And this is --
actually,
22 it's comprised of two documents. One is a letter
from
23 Mr. Hoyt to you, and the second is your technical
24 bulletin. And I want to ask you first, have I
25 correctly identified the letter as a February 26,
1973

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17978
1 letter from Mr. Hoyt to you?
2 A. Yes.
3 Q. And attached to it, have I correctly
4 identified the document entitled, Inhalation
Studies
5 with Cigarette Smoke; A Technical Bulletin on the
6 Methods Used by Bio-Research Consultants, as a
document
7 prepared by your lab?
8 A. Yes.
9 COUNSEL: Excuse me. Same objections as
10 earlier as to admissibility, et cetera, on the
11 document.
12 BY MR. RANGLES:
13 Q. Now, this was the technical bulletin
that you
14 were inviting people in your advertisements to
write in
15 for?
16 A. I suppose so, yes.
17 Q. Now, Mr. Hoyt wrote to you on February
26th,
18 1973 about this technical bulletin. And he had
some
19 concerns about that bulletin, didn't he?
20 A. Yes.
21 Q. As a matter of fact, he repeated some of
the
22 terms of your contracts. And if you will turn to
page
23 two of the letter, Mr. Hoyt -- I'm sorry, I think
it's
24 this one.
25 A. Yeah. I look for something else.
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17979
1 Q. On page two of the letter, Mr. Hoyt
lists a
2 number of concerns he has about the advertisement
and
3 the technical bulletin, doesn't he?
4 A. Yes.
5 Q. He states that: Consent has not been
given
6 by us for your disclosure of information as a
result of
7 work done under the contract.

8 Correct?
9 A. Yes.
10 Q. And you testified earlier that work done
11 pursuant to a contract is owned by the contracting
12 agency, if it arose out of that contract?
13 A. Right.
14 Q. And so he had a concern about that.
15 He also indicated that your results up
to
16 that point were incomplete and inconclusive,
didn't he?
17 A. Yes, I think he did.
18 Q. And he also points out that you refer to
the
19 Walton-Morrissey smoke exposure machine, and he
points
20 out that that's not your machine, doesn't he?
21 A. Yes, that's what he did.
22 Q. As a matter of fact, Mr. Hoyt says: The
23 machines you have been using are our property.
24 Is he correct in that the machines you
were
25 using --

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17980
1 A. He wasn't correct in that. Because we
had
2 machines long before they supported any machine
work.
3 But this is my response to Mr. Hoyt's letter of
March
4 2, 1973.
5 Q. I promise you, I'm going to get to that.
6 A. And you get it now.
7 Q. I promise.
8 A. Well, I very clearly exempt from this
9 contract agreement the following: We have, of
course,
10 acquired know-how in the inhalation technology
during
11 the past four years, but there is nothing in our
12 contract that gives CTR exclusivity of our
professional
13 skills.
14 And that is the whole point here. They
had
15 no right whatsoever to claim ownership of what we
had
16 learned long before they supported this work.
17 Q. Dr. Homburger, you got a little ahead of
me,
18 so let me catch up to you.
19 I would like to attach the letter
20 Dr. Homburger just referred to as Exhibit 17.
21 And I guess you already have your own
copy.
22 A. Yeah.
23 Q. This letter, just so we're clear for the
24 record, is what has now been marked as Defense
Exhibit
25 17, and it's as you just described to me, correct?

17981

1 A. Yes.
2 Q. It's a letter from you to Mr. Hoyt of
March
3 2nd, 1973 in which you disagree with some of the
4 interpretations in his letter, correct?
5 A. Right.
6 Q. You actually agreed with him --
7 A. I agreed with most of it but not with
the
8 limitation of our applying our know-how for
anybody
9 else.
10 Q. So your fundamental point of
disagreement
11 with Mr. Hoyt was that you had know-how that you
could
12 still market to other contract, other people
interested
13 in giving you a contract, correct?
14 A. Correct.
15 Q. And it was important to you to have the
16 freedom to do that?
17 A. Oh, absolutely.
18 Q. Mr. Hoyt concluded that letter by
insisting
19 that you adhere to the terms of the contract,
correct?
20 A. Yes.
21 Q. His prior letter. And your response was
that
22 you were.
23 Now, this was an ongoing debate between
you
24 and CTR in 1973 as to whether these advertisements
and
25 the technical bulletin violated the terms of your
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17982

1 contract, right?
2 A. Yes.
3 Q. Now --
4 A. And excuse me. On March 13th, Mr. Hoyt
5 suggested --
6 Q. Could I stop you, and I'm going to go to
that
7 right now.
8 A. All right.
9 Q. Could I mark this Defense Exhibit 18?
10 Dr. Homburger, I've marked Defense
Exhibit
11 18, I believe the document you wanted to discuss
next,
12 and if I could just be clear, this is a letter
from
13 Mr. Hoyt to you dated March 13th, 1973 in response
to
14 your March 2nd letter, correct?

15 A. Yes.
16 Q. And in this Mr. Hoyt disagrees with you
as to
17 whether the material in your technical bulletin
18 contains nothing that has not previously been
published
19 as authorized by CTR, correct?
20 He disagrees with you about that; is
that
21 right?
22 A. Yes.
23 Q. And then he states: To clarify this as
well
24 as the statements in the second paragraph of your
25 letter, particularly that the methodology is
ready, I

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17983
1 suggest you have further discussion with Dr.
Hockett
2 and Mr. Jacob.
3 And then he goes on to say: Dr. Hockett
has
4 not yet received a copy of your proposed
manuscript for
5 presentation at the Society of Toxicology meeting
on
6 March 21st.
7 And that document he is referring to is
the
8 presentation we were just discussing a few moments
ago
9 which was Defense Exhibit Number -- Defense
Exhibit
10 Number 12, correct?
11 COUNSEL: Objection to the form.
12 THE WITNESS: I can't follow you.
13 BY MR. RANGLES:
14 Q. In his second paragraph, he is
discussing
15 your manuscript for presentation at the Society of
16 Toxicology on March 21st?
17 A. Right.
18 Q. And that is a manuscript I showed you a
few
19 minutes ago, which I think we had labeled --
20 A. We had before, yes, I understand.
21 Q. All right. Now, Mr. Hoyt suggests, to
22 clarify the dispute about methodology and about
the
23 technical bulletin, that Dr. Hockett and Mr. Jacob
24 should get in touch with you, correct?
25 A. Right. And he said before the 21st of
March,

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17984
1 and I don't think that ever took place.
2 Q. Now, Mr. Jacob was CTR's lawyer, wasn't
he?

3 A. At the time, yes.
4 Q. So it made sense for CTR to involve him
to
5 help evaluate whether the terms of a contract were
6 being met, didn't it?
7 A. I suppose so, yes.
8 Q. Actually, Dr. Homburger, your dispute
with
9 CTR regarding the advertisements and the technical
10 bulletin that we've just been talking about was
the
11 reason Dr. Hockett and Mr. Jacob visited you in
Maine
12 in August of 1973, wasn't it?
13 COUNSEL: Objection, argumentative.
14 A. I suppose so, but the real reason for
the
15 manuscript that we had submitted to them for
approval.
16 Q. Is it your testimony you discussed both
17 issues in Maine?
18 A. No.
19 Q. Or you just discussed the manuscript?
20 A. We just discussed the manuscript in
Maine.
21 Q. And that, again, was the JNCI
manuscript?
22 A. Yes. October 1974, published.
23 Q. Actually, Dr. Homburger, it's true you
had
24 two meetings at your summer home in Maine in
August of
25 1973 with Mr. Jacob and Dr. Hockett, isn't it?

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17985
1 A. No. I don't remember that.
2 Q. I'd like to mark this Defense Exhibit
19.
3 Dr. Homburger, I'd like to ask if you
could
4 identify Defense Exhibit 19 as a letter from
5 Dr. Hockett to you in Maine dated August 7th,
1973.
6 A. Yes.
7 Q. And in this letter Dr. Hockett -- do you
8 recall receiving this letter, by the way?
9 A. No.
10 Q. Let's see if looking at it refreshes
your
11 recollection: Ed and I are obliged to you -- and
Ed,
12 of course, would be Ed Jacob?
13 A. Yes.
14 Q. -- for allowing us to encroach upon your
15 vacation on August 2nd for a discussion of the
16 advertisement by Bio-Research Consultants in the
17 Tobacco Reporter for June 1973 as it bears upon
the
18 contractual obligations between Bio-Research
19 Consultants and the Council for Tobacco Research
USA.

20 That's what he says in the first
paragraph,
21 correct?
22 (Fast forwarding.)
23 BY MR. RANGLES:
24 Q. Let's return to this. Let's take it
apart a
25 little bit.

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17986
1 Ed and I -- Ed Jacob and Dr. Hockett --
are
2 obliged to you for allowing us to encroach upon
your
3 vacation on August 2nd.
4 Let's stop there. They did come up
during
5 your vacation in August, correct?
6 A. That is correct.
7 Q. Is he correct that it was on or about
August
8 2nd?
9 A. I don't know, because I marked it as
July
10 dash August.
11 Q. You weren't sure of the exact time.
12 And then he says: For discussion of the
13 advertisement by Bio-Research Consultants in the
14 Tobacco Reporter for June 1973.
15 A. That never happened.
16 Q. And the advertisement I'm referring to
is
17 what we had marked as defense --
18 A. Yes, I saw that.
19 Q. And you saw the correspondence with Mr.
Hoyt
20 regarding the technical bulletin regarding that,
21 correct?
22 A. Right.
23 Q. And that was the subject of a dispute
between
24 you and CTR in the spring of 1973, correct?
25 A. Yes. But they never came twice to
Maine. It

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17987
1 was one reason.
2 Q. On this visit of August 2nd, is it your
3 testimony that Mr. -- that Dr. Hockett is wrong
when he
4 says you discussed this subject?
5 A. Absolutely.
6 Q. And he is wrong when he says: As it
bears
7 upon the contractual obligation between Bio-
Research
8 Consultants and the Council for Tobacco Research?
9 A. No. That was discussed at the one
meeting we

10 had. That was discussed. That was the question
of
11 whether we could publish that paper.
12 Q. But the advertisement wasn't discussed?
13 A. No.
14 Q. In the second paragraph he says: We
endeavor
15 to make clear our genuine interest in, according
to
16 Bio-Research, freedom to publish any scientific
data as
17 it may develop in experiments done under our
18 sponsorship.
19 And you said a moment ago that was
discussed,
20 wasn't it?
21 A. That was discussed and they were not
willing
22 to allow it except with their formulation.
23 Q. Then it says: But we must also assure
that
24 the interpretations you may make are clearly
designated
25 as your own and are not misconstrued as being in
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17988
1 accordance with those of the Council.
2 Did you discuss that, that the
3 interpretations must be designated as your own and
not
4 CTR's?
5 A. I think we discussed that, because in
the
6 following papers we always put down the opinions
are
7 those of the authors and not the sponsors.
8 Q. Then he goes on to say in the third
9 paragraph: Further, as we understand it, you have
10 agreed to furnish us with copies of all patents or
11 patent applications held or filed by you or your
12 colleagues of Bio-Research that are relevant to
13 mechanical devices for tobacco smoke production or
14 exposure of experimental animals to such smoke so
that
15 we may be fully informed of their claims in
relation to
16 the claims of the Council patent. The disposition
of
17 devices belonging to the Council must also be
18 considered and resolved.
19 Did you all discuss patent issues?
20 COUNSEL: Objection.
21 THE WITNESS: We never patented
anything.
22 This was a patent of Walton, and Walton was not an
23 employee of ours. He was just helping us.
24 BY MR. RANGLES:
25 Q. So you never had an issue regarding a
patent

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17989
1 with CTR?
2 A. No.
3 Q. And you never corresponded with CTR
regarding
4 patents?
5 A. I don't believe so. I don't remember
6 anything like that, and I don't have any -- I
think the
7 only patent I had was for another tobacco company
on a
8 filter.
9 Q. And you didn't discuss, or did you
discuss
10 the disposition of devices belonging to Council at
that
11 meeting?
12 A. No.
13 Q. In the next paragraph he, again,
discusses
14 your technical bulletin. He says: We also
understand
15 the technical bulletin mentioned in your
advertisement
16 is the same document that we received in March of
this
17 year entitled, Inhalation Studies with Cigarette
Smoke.
18 You indicated that you would be
receptive to
19 consideration of our suggestions for modifying the
20 wording of this bulletin so far as it relates to
21 experiments done under our sponsorship.
22 Did you discuss that?
23 COUNSEL: Objection to the form.
24 THE WITNESS: I don't remember.
25 BY MR. RANGLES:
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17990
1 Q. Do you not remember discussing it or
you're
2 sure you didn't discuss it?
3 COUNSEL: Objection to the form.
4 THE WITNESS: I don't remember.
5 BY MR. RANGLES:
6 Q. Did you ever discuss modifying the
language
7 of your technical bulletin with Dr. Hockett or
8 Mr. Jacob?
9 A. I don't believe so.
10 Q. And in the last sentence of that
paragraph,
11 still further you agree to include in the bulletin
a
12 disclaimer to the effect that the opinions
expressed
13 therein are those of the authors and not of the
14 Council.
15 Do you remember agreeing to do that?
16 A. That may have been discussed not only

with

17 respect to the bulletin but in general for future
18 publications, because I don't remember the

discussion,

19 but we did do that.

20 Q. You did submit --

21 A. We did make that footnote.

22 Q. So you may well have discussed this with
23 Dr. Hockett as he reports --

24 COUNSEL: Objection to the form.

25 Q. It is possible?

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17991

guess 1 A. But this is conjecture. I mean, your

2 is as good as mine.

3 (Fast forwarding.)

4 BY MR. RANGLES:

5 Q. You don't remember whether you discussed
6 making this change to the technical bulletin in

the

7 meeting with Mr. Jacob and Mr. Hockett at your

vacation

8 home in Maine in August of 1973?

9 A. No, no, no. I remember very clearly

that at

10 the meeting in Maine with Hockett and a lawyer,

there

11 was no discussion other than what was in regard to

the

12 manuscript submitted to them.

13 Q. So the only subject you discussed in

this

14 meeting in August 1973 was the draft JNCI

manuscript?

15 A. Right.

16 Q. To the extent Dr. Hockett mentions

anything

17 else in this letter about what you discussed, he

is

18 wrong?

19 COUNSEL: Objection to the form.

20 THE WITNESS: He refers to another

meeting,

21 which I don't recall taking place.

22 (Fast forwarding.)

23 BY MR. RANGLES:

24 Q. Let me ask you about the second letter I
25 handed you then. Forget about the first one.

Let's

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17992

Exhibit 21. 1 talk about the second one, which is Defense

2 On Council for Tobacco Research

letterhead

3 dated August 30th, 1973 from Bob Hockett to Dr.

Freddy

4 Homburger; that's what the letter purports to be,

5 correct?
6 A. Yes.
7 COUNSEL: Objection to the form.
8 Q. Do you recall receiving this letter?
9 A. No.
10 Q. Let's talk about what it says. It says:
11 Again, we are obliged to you for taking time from
your
12 vacation on August 16 to discuss with Ed and me
the
13 technical bulletin on Inhalation Studies with
Cigarette
14 Smoke.
15 Do you recall meeting with them a second
time
16 on August 16th to discuss a technical bulletin on
17 Inhalation Studies with Cigarette Smoke?
18 A. No.
19 COUNSEL: Objection asked --
20 (Fast forwarding.)
21 Q. Doctor, I'd like to hand you what's been
22 marked as Defense Exhibit 22 and see if you can
23 identify this as a letter from you to Dr. Hockett
at
24 CTR on March 28th, 1974 enclosing a manuscript for
25 proposed publication in the Journal of the
National

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17993
1 Cancer Institute.
2 Is that what this is?
3 A. Yes.
4 Q. This is the manuscript we have been
5 discussing, your manuscript to the Journal of the
6 National Cancer Institute; is that correct?
7 A. I don't know. I would have to compare
with
8 the other copy, with the printed copy.
9 Q. You have testified today that the
manuscript
10 at issue in your meetings with Jacob and Hockett
was
11 your proposed Journal of NCI manuscript; isn't
that
12 correct?
13 A. Yes. It is this.
14 Q. It is. And this is the manuscript --
15 A. That was the first one.
16 Q. This is the manuscript that you were
having
17 the discussions with Hockett and Jacob about that
you
18 eventually submitted to the Journal of the
National
19 Cancer Institute; isn't that correct?
20 COUNSEL: Objection to the form.
21 THE WITNESS: April 1st, 1974. It was
22 received April 24th by the journal, okay.
23 BY MR. RANGLES:
24 Q. This is the paper we have been
discussing,

25 correct?

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17994

1 A. Yes.

first

2 Q. And you testified -- well, this was the

3 and only draft of this paper that you sent to CTR,
4 wasn't it?

5 COUNSEL: Objection to the form.

6 THE WITNESS: Yes.

7 BY MR. RANGLES:

28th,

8 Q. Okay. And this draft is marked March

9 1974, isn't that correct, your cover letter?

10 A. Yes.

you

11 Q. So, Dr. Homburger, there is no way that

draft

12 could have been discussing in August of 1973 a

March

13 paper that you didn't even circulate to CTR until

14 of 1974, is there?

15 COUNSEL: Objection to the form,
16 argumentative.

17 THE WITNESS: Say that again.

18 MR. RANGLES: Why don't you read that

19 question back?

20 (The record was read by the reporter.)

copy

21 THE WITNESS: I must have had another

22 earlier.

23 BY MR. RANGLES:

first and

24 Q. Didn't you just testify that is the

25 only draft of that paper you sent to CTR,

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17995

1 Dr. Homburger?

2 COUNSEL: Objection to the form.

suggestions,

3 THE WITNESS: Enclosed is a manuscript

4 together with tables and photograph, your

1974.

5 March -- I think there must be another manuscript,

6 because the journal received it on April 24th,

manuscript.

7 Must be another paper. Another

8 BY MR. RANGLES:

9 Q. What must be another manuscript, Doctor?

manuscript

10 A. I don't say whether there was a

11 before or not.

and

12 Q. But you testified just a few minutes ago

the

13 you testified yesterday, didn't you, that this was

to

14 first and only draft of this manuscript you sent

15 CTR?

16 COUNSEL: Objection to the form.
17 THE WITNESS: Did I testify as to this
18 particular exhibit? I don't know. All I know is
that
19 we had that meeting with Hockett and Jacob before
we
20 submitted that modified manuscript to the Journal
of
21 National Cancer Institute on April 24th, 1974.
22 (Fast forwarding.)
23 BY MR. RANGLES:
24 Q. And I will read, if you would like to
follow
25 along with me, Doctor, wasn't this your testimony
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17996
1 yesterday: Now, I'd like to show you an item, we
2 called it Exhibit 11, and ask you if you would
identify
3 this. This is a manuscript you sent to Robert
Hockett,
4 research director for the Council for Tobacco
Research
5 on March 28, 1974; is that right?
6 You answered: Yes.
7 And this was the draft manuscript for
the
8 JNCI article, correct?
9 And you answered: That's what this is.
10 And I said: That's right. That's what
this
11 is?
12 You said: Yes.
13 And I said: This is the draft?
14 And you said: Yes.
15 And I asked: This was the first and
only
16 draft of that article you sent to CTR, right?
17 And you said: Yes.
18 A. Well, then it is.
19 Q. It is the first and only draft of the
article
20 you sent to CTR. That's your testimony today as
well?
21 COUNSEL: Objection to the form.
22 BY MR. RANGLES:
23 Q. Is that your testimony today as well,
Doctor?
24 A. Yes. Yes. I can't change.
25 Q. So, Doctor, it's not possible for you to
have

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17997
1 been discussing an article in August of 1973 with
2 representatives from CTR when you had not even
3 transmitted a draft of that article until six
months
4 later, is it?
5 A. A draft to whom?

6 Q. To CTR.
7 A. There must have been another draft
because
8 the meeting took place, the discussion was based
on the
9 draft I sent to CTR. And I can't help it if you
don't
10 have it. I could possibly find it, but I'm not
sure.
11 Q. As you sit here today, are you
speculating
12 that there must have been another draft, or do you
13 remember another draft?
14 A. No, I don't remember anything. At the
15 moment, I'm most confused, and I cannot be relied
upon.
16 Because this is, this is just some surprise to me.
I'm
17 sure I sent him another manuscript.
18 (The videotape was paused.)
19 THE COURT: Why don't you stop it here?
Stop
20 it at this point. I said we'd go through the
whole
21 hour and twenty minutes, unless you all needed a
break.
22 I need a break, so I'm going to stop it. We'll
pick it
23 up in a few minutes.
24 (Brief recess.)
25 THE COURT: Have a seat, folks.
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17998
1 Let's proceed.
2 (The videotape was continued as
follows:)
3 BY MR. RANGLES:
4 Q. Is it fair to say Exhibits 25 through 41
5 reflect reporting that you did in the scientific
6 literature concerning your inhalation experiments
with
7 hamsters and cigarette smoke?
8 A. Yes.
9 COUNSEL: Objection to the form.
10 Q. And in each of those publications, you
11 characterized your findings in a fashion with
which you
12 were comfortable, didn't you?
13 A. I characterized what?
14 Q. You characterized your research in a way
you
15 thought appropriate, didn't you?
16 A. Yes.
17 Q. And you reported your hamsters developed
18 cancer in each of these reports, didn't you?
19 COUNSEL: Objection to the form.
20 THE WITNESS: Yes, I think I did.
21 BY MR. RANGLES:
22 Q. You also reported on your CTR-funded
hamster
23 inhalation research at four separate scientific

24 seminars, didn't you?
25 A. You mean these presentations of papers?

Yes.

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17999

1 Q. Correct.
2 And Doctor, the earliest report you have
in
3 the scientific literature concerning your hamster
4 inhalation work in which you state your hamsters
got
5 laryngeal cancer was your March 10, 1973 letter to
the
6 editor of The Lancet, correct?
7 That is Exhibit 25.

8 A. I think so.

9 Q. In that letter, you stated your views on
your
10 research as you thought appropriate, didn't you?

11 A. Yes.

12 Q. And the second report was your Society
of
13 Toxicology abstract on March 18, 1973?

14 A. Yes.

15 Q. Both of those you reported that your
hamsters
16 got cancer of the larynx from inhaling tobacco
smoke,
17 correct?

18 A. Yes.

19 Q. So the results of your CTR-funded
inhalation
20 research have been published repeatedly in the
21 scientific literature at least 18 times, isn't
that
22 correct?

23 COUNSEL: Objection to the form.

24 THE WITNESS: Well, at the end, yes.

25 BY MR. RANGLES:

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18000

1 Q. And these results have been available
for
2 anyone to review who wants to for more than 20
years,
3 haven't they?

4 A. Yes.

5 Q. So, in reality, Dr. Homburger, nobody
has
6 prevented you from publishing the results of your
7 hamster inhalation research, have they?

8 A. No, but they tried. Because that was
the
9 first paper that described the thing in detail,
and
10 Hockett and Jacob wanted me to change the

description
11 of the lesions.

12 Q. The JNCI paper is what you're referring

to?
13 A. Yes.
14 Q. And before your August meetings with
15 Dr. Hockett and Mr. Jacob you had published the
results
16 of your hamster inhalation work in two separate
17 scientific forum, hadn't you, The Lancet and
Society of
18 Toxicology?
19 COUNSEL: Objection to the form.
20 THE WITNESS: Yes, and one of those
sabotaged
21 the press conference.
22 BY MR. RANGLES:
23 Q. But in both of those, you reported that
your
24 hamsters had developed laryngeal cancer, didn't
you?
25 A. Yes.
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18001
1 Q. And no one at CTR tried to stop you from
2 making these two publications or presentations,
did
3 they?
4 COUNSEL: Objection to form.
5 THE WITNESS: No, nobody did. I don't
know
6 whether they knew I was going to make them.
7 BY MR. RANGLES:
8 Q. But nobody did?
9 A. No.
10 Q. Now, you talked about sabotage of a
press
11 conference, but that wasn't -- your allegation
about
12 that doesn't concern the American Society of
Toxicology
13 meeting --
14 A. No.
15 Q. -- which was published in the spring of
1973,
16 does it?
17 A. No, but it was at Atlantic City.
18 Q. So you presented your paper --
19 A. 1975.
20 Q. You presented your findings at a March
18th,
21 1973 meeting of the Society for Toxicologists as
is
22 reflected in the abstract which is Exhibit Number
26?
23 A. Yes.
24 Q. And nobody tried to interfere with you
in
25 making that presentation?
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18002
1 A. Nobody did.

2 Q. Now, let's talk about the subject you
just
3 raised. At the April 8th, 1974 American
Federation of
4 Pathology meeting, you presented a paper that
5 summarized your hamster inhalation experiments?
6 A. Yes.
7 Q. And you presented slides to the group,
didn't
8 you?
9 A. Yes.
10 Q. We talked about the slides earlier
today,
11 didn't we?
12 A. Yes.
13 Q. You also prepared and left for anyone to
pick
14 up who wanted it a press release regarding the
15 research, didn't you?
16 A. I'm not sure that I left it there or
that I
17 took it with me to the press conference. I don't
18 recall that I distributed it.
19 Q. You don't remember if you distributed
it?
20 A. No.
21 Q. You may have left it on a table for
people to
22 take; you don't remember?
23 A. I wouldn't know.
24 Q. All right. And an abstract regarding
your
25 research at this April 8th, 1974 American
Federation of

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18003
1 Pathology meeting was published, wasn't it?
2 A. Yes.
3 Q. And that's in the stack of exhibits I've
just
4 shown you, correct?
5 A. Yes.
6 Q. I'd like to see Plaintiffs' Exhibit
Number 1,
7 please. I'm sorry. Give me Plaintiffs' Exhibit
Number
8 2. No, I want Plaintiffs' Exhibit Number 1, not
9 Defendants'.
10 Doctor, I would like to show you what
has
11 been marked as Plaintiffs' Exhibit Number 1. Do
you
12 recall testifying about this document earlier
today?
13 A. This is labeled Number 9. Oh, up here?
14 Q. Up at the top. Do you recall testifying
15 about this document earlier?
16 A. Yes.
17 Q. And you recall testifying about this
document
18 actually at the Cipollone trial and when we talked

19 yesterday about it?
20 A. Yes.
21 Q. Now, I'd like for you to look at that
22 document. You said you tried to schedule a press
23 conference, and that press conference didn't
happen,
24 correct?
25 A. Right.

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18004

1 Q. Now, do you know who Leonard Zahn was?
2 A. No idea.
3 Q. Do you know who Judy Graves was?
4 A. No idea.
5 Q. Do you know what her role was at the
6 conference?
7 A. I don't know.
8 Q. Mr. Zahn states that he heard that you
9 were -- and I refer you particularly to paragraph
10 two, he states: I learned from Judy Graves,
public
11 information officer of the American Society for
12 Experimental Pathologists ASEP, that an unlisted
press
13 conference had been scheduled for Homburger for
twelve
14 noon on Monday. He was to have a news release
with
15 him, and he was to tell the press that the tobacco
16 industry was attempting to suppress important
17 scientific information about the harmful effects
of
18 smoking. He was going to point specifically to
CTR.
19 Was he right about what the subject
matter of
20 your press conference was going to be?
21 A. I have no idea what was in that press
22 release. I don't remember. But I don't think
that I
23 would have even contemplated to do that at that
type of
24 a meeting.
25 Q. You testified yesterday that all you
planned

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18005

1 to do at the press conference was repeat your
2 scientific findings?
3 A. What I had given out as new scientific
4 observation.
5 Q. What you planned to do at this press
6 conference was repeat the information that was
7 contained in your abstract, in your oral
presentation
8 and in your slides; isn't that correct?
9 A. Absolutely, yes.
10 Q. And in your press release that you had
11 prepared?

12 A. Yes.
13 Q. And each of those were reporting on the
14 results of your hamster inhalation research,
correct?
15 A. Right.
16 Q. And it's your testimony that the purpose
of
17 the press conference was going to be to say the
same
18 thing?
19 A. Reach a broader scientific public.
20 Q. And when Mr. Zahn says that he thought
you
21 were going to talk about attempted suppression of
22 information or to accuse CTR of something, he is
just
23 wrong, isn't he?
24 A. I don't know where he got this idea.
25 Q. Yesterday you told me he must be crazy
to

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18006
1 have thought that, didn't you?
2 A. I still think so.
3 Q. Indeed. On page two of the document,
4 Mr. Zahn says in that first paragraph at the top:
I
5 suggested to Judy -- talking about Ms. Graves --
that
6 she call him then Sunday at home and arrange to
meet
7 him at his hotel on Monday. She called back later
that
8 evening to say she had done so, telling Homburger
the
9 press conference has been called off because of
10 scheduling difficulties in the press room.
11 Did Ms. Graves ever call you?
12 A. I have never heard of Ms. Graves. I
wouldn't
13 know her if I heard her or saw her.
14 Q. So, regardless of what Mr. Zahn may or
may
15 not have done with respect to your press
conference,
16 the subject matter that you planned to discuss at
your
17 press conference, you discussed at that conference
in
18 your abstract, in your press release, and in the
19 slides; isn't that correct?
20 A. Yes.
21 Q. And in your oral presentation, correct?
22 A. Of course.
23 Q. So you disclosed the information you
were
24 going to disclose at your press conference four
ways at
25 that seminar alone, correct?

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18007

1 A. Yes.

2 Q. And this seminar wasn't the first time

you

3 publicly reported your findings that hamsters who

4 inhaled cigarette smoke in your research got

laryngeal

5 cancer; wasn't it?

6 A. It was the third time.

7 (Fast forwarding.)

8 Q. Dr. Homburger, at the time your contract

was

9 first funded by CTR in 1970, another investigator

was

10 already working with the Syrian golden hamster, is

that

11 correct?

12 A. Dontenwill in Germany.

13 Q. He was using whole smoke in an

inhalation

14 study and reported preliminary results as early as

1969

15 before your first inhalation experiment for CTR

16 started?

17 A. Yes.

18 Q. And that report was given at a

conference on

19 inhalation carcinogenesis at Gatlinburg,

Tennessee,

20 that you attended.

21 A. I was there.

22 Q. And you remember that conference?

23 A. Yes, I remember.

24 Q. And Dr. Dontenwill reported on the

completion

25 of his work again in November of 1972 at a meeting

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18008

1 sponsored by the National Institutes of Health;

isn't

2 that right?

3 A. I was not there, but I know about it,

and he

4 published his paper before ours. I don't remember

5 exactly when.

6 Q. And he reported that he had found

laryngeal

7 invasive cancers in his hamster, didn't he?

8 A. Yes, in a few.

9 Q. Would you agree, Dr. Homburger, that

most

10 scientists doing any significant animal research

at

11 that time were aware of Dr. Dontenwill's work and

12 findings after the 1969 and 1972 meetings?

13 A. Were they aware?

14 Q. Yes.

15 A. I would think people interested in

tobacco

16 and health were aware.

17 Q. It was pretty big news in the scientific
18 community, wasn't it?
19 A. Yes.
20 Q. Now, you had --
21 (Fast forwarding.)
22 BY MR. RANGLES:
23 Q. Now, your breed, particular breed of
Syrian
24 golden hamsters is unique, isn't it?
25 A. Yes. Any inbred strain is unique.
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18009
that
haven't
other
characterized
was, of
breed?
18 A. Yes.
19 (Fast forwarding.)
20 BY MR. RANGLES:
21 Q. Let me just finish my thought. You
22 anticipated me.
23 No other animal model has been proven to
24 produce significant numbers of cancers from
inhaling
25 fresh whole smoke except your Syrian golden
hamsters,
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18010
1 correct?
2 A. Right.
3 Q. Now, part of unique genetic make-up that
you
4 bred your hamsters for was to insure a super level
of
5 susceptibility to cancer, correct?
6 A. Plus low incidence of spontaneous
tumors.
7 And we were very lucky in finding such an animal.
8 Q. To put it very simply, you were
designing an

9 animal that, when exposed to a potential chemical
10 carcinogen, would get cancer much more easily than
11 other animals?
12 A. Yes.
13 Q. And that's what your Syrian hamsters
did,
14 didn't they?
15 A. Yes.
16 Q. And they were designed to get cancer
when
17 other animals, even other hamsters, would not,
right?
18 A. Right.
19 Q. Now, your hamsters are the only strain
of
20 animal that have been shown to develop tumors of
the
21 respiratory tract, correct?
22 A. Again, except the dog.
23 Q. Except for the questionable dog study.
24 A. Questionable.
25 Q. And you exposed your hamsters to the
maximum

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18011
being
1 dose of smoke you could, consistent with them
2 healthy.
3 A. Without damaging their health.
4 Q. And in spite of their unique
susceptibility
5 to cancer and the massive doses of smoke, none of
your
6 hamsters developed any lung tumors, correct?
7 A. Correct.
8 Q. And the only cancers you claim to have
caused
9 were microscopic tumors in the larynx, correct?
10 A. In the larynx. And there were some
tumors in
11 the oral cavity and nasal cavity, but very few.
12 Q. But none in the lung?
13 A. None of the lung.
14 (Fast forwarding.)
15 THE COURT: What page are we at; do you
know?
16 VIDEOGRAPHER: We're going to be, Your
Honor,
17 on Page 193 when we resume. That might be a
moment.
18 BY MR. RANGLES:
19 Q. And you commented earlier that the
20 pathologists you showed these slides to differed
among
21 themselves about which slide proved what, didn't
they?
22 A. Yes.
23 Q. And you also commented that it is very
24 difficult to diagnose these sorts of changes,
isn't it?
25 A. Yes.

18012

1 Q. So there's a lot of room for reasonable
2 scientific difference of opinion about these sorts
of
3 slides?

4 A. There is, but there is no room for
completely
5 negative opinion, because every one of them found
6 several that he considered carcinomas.

7 Q. But one pathologist may have found
figure one
8 carcinomas, while the second said, no, it's not
figure
9 one, it's figure ten?

10 A. Possible.

11 Q. Is that right?

12 A. Possible.

13 Q. Your testimony is they all found some
14 carcinomas but they even differed among themselves
15 about which were carcinoma and which were not?

16 A. Yes.

17 (The videotape was paused.)

18 VIDEOGRAPHER: That's it on this tape.

19 THE COURT: All right. Take a couple
more
20 minutes.

21 (Brief recess.)

22 THE COURT: Okay. Let's finish up.

23 (The videotape continued as follows:)

24 BY MR. RANGLES:

25 Q. Now, the purpose of your contract with
CTR

18013

1 was to develop an animal model for the development
of
2 lung cancer in smoke inhalation experiments,
correct?

3 A. Yes.

4 Q. As a matter of fact, the title of your
5 contract was, The Determination of the Usefulness
of
6 the Syrian Golden Hamster as Model Animal for
7 Inhalation Studies, wasn't it?

8 A. Well, we left lung cancer out because we
knew
9 it wouldn't produce lung cancer.

10 Q. But you understood from the beginning
that
11 that's what CTR was looking for, correct?

12 A. Yes, everybody was looking for that.

13 Q. They were looking for an animal model
that
14 they could test smoke with to determine if it
would
15 cause lung cancer, correct?

16 A. Yes.

17 Q. And you didn't get lung cancer in any of

your

18 hamsters, did you?

19 A. No.

20 (Fast forwarding.)

21 BY MR. RANGLES:

a new

22 Q. In fact, the reason you did not receive

had

23 contract from CTR, Dr. Homburger, was because CTR

model

24 decided to go with the mouse as the experimental

25 for inhalation experiments, correct?

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18014

1 A. Yes, that's correct.

2 COUNSEL: Objection to form.

3 BY MR. RANGLES:

contract

4 Q. And Dr. Gardner told you that no new

because

5 would be issued for the hamster inhalation work

in

6 you had not met the goal of producing lung cancer

7 the hamsters, right?

8 A. Right.

9 (Fast forwarding.)

10 BY MR. RANGLES:

new

11 Q. Now, after CTR declined to give you a

research

12 contract to pursue animal/hamster inhalation

States

13 with tobacco smoke, you applied to the United

14 Government for a --

15 A. Repeatedly.

16 Q. -- grant. Repeatedly. More than once?

17 A. Yes.

were

18 Q. And you applied, and your applications

19 all turned down, weren't they?

20 A. Yes.

fund

21 Q. The government declined to continue to

after

22 at all your animal inhalation experiments even

in

23 you had published the results of your experiments

24 the scientific literature, correct?

25 A. Right.

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18015

1 Q. As a matter of fact, the National Cancer

written

2 Institute turned you down and told you you had

3 a bad application, didn't they?

4 A. Yes.

5 (Fast forwarding.)

6 EXAMINATION

7 BY MS. SCHNEIDER:

8 Q. Doctor, just a few questions. First, I
9 didn't cover this earlier, and I don't think it
was
10 covered by opposing counsel.
11 You're not able to come to Miami to
testify
12 at this trial because of your health reasons you
13 indicated yesterday.
14 A. I can't travel.
15 Q. Although you're familiar with entities
16 funding research and reviewing publications that
are to
17 be made about the research, no one, other than the
18 Council for Tobacco Research, in your many years
of
19 doing research and publishing results, ever
threatened
20 you if you did not change the results.
21 Is that a fair statement?
22 A. No.
23 COUNSEL: Objection to the form. It's
24 leading.
25 BY MS. SCHNEIDER:
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18016
1 Q. No one other than the --
2 (Fast forwarding.)
3 Q. Let me say the question, Doctor, and let
them
4 make their objection so we get a question,
objection
5 and answer so that it's clear.
6 No one other than the Council for
Tobacco
7 Research, in your many years of research, ever
asked
8 you to change the publication or the results that
9 had obtained in your research; is that a fair
10 statement?
11 COUNSEL: Objection to the form.
Leading,
12 lack of foundation.
13 BY MS. SCHNEIDER:
14 Q. Is that a fair statement, Doctor?
15 A. That is a fair statement.
16 Q. And there is no doubt in your mind but
that
17 you got no more funding from the Council for
Tobacco
18 Research because you published the results of your
19 studies that inhalation of cigarette smoke caused
20 laryngeal cancer in hamsters?
21 (Fast forwarding.)
22 BY MS. SCHNEIDER:
23 Q. There is no doubt in your mind but that
you
24 got no more funding from the Council for Tobacco
25 Research because you published the results of your
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18017
1 studies that inhalation of cigarette smoke caused
2 laryngeal cancer?
3 COUNSEL: Objection.
4 Q. Doctor, your answer was no doubt,
correct?
5 A. No doubt.
6 Q. The reason that you published your
results in
7 spite of Council for Tobacco Research's threats
was
8 because you believe that science is science and
when
9 there is a finding which is important to public
health,
10 it should be published and not hidden, correct?
11 COUNSEL: Objection. Objection.
Leading.
12 THE WITNESS: Absolutely.
13 She couldn't lead me. I wouldn't
follow.
14 (Fast forwarding.)
15 BY MS. SCHNEIDER:
16 Q. Doctor, you've been shown a lot of
documents
17 throughout the cross examination. I dare say
there are
18 probably 2 or 300 pages of documents in front of
you
19 that have been marked as exhibits, and I believe
we're
20 into the 40s. 44 is the last exhibit.
21 You haven't read through each and every
one
22 of these documents page by page while you have
been
23 asked questions?
24 A. No, I haven't.
25 (The videotape was concluded.)
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18018
1 VIDEOGRAPHER: That's all.
2 THE COURT: Okay. Let me talk with the
3 lawyers for a minute.
4 (Discussion off the record.)
5 THE COURT: All right, folks. We'll go
ahead
6 and recess for the day. Tomorrow being Friday,
we'll
7 pick you folks up on Monday at 9:15 your time,
9:30 our
8 time or thereabouts.
9 All right. Same rules apply over the
weekend
10 recess. Please, do not discuss the case, research
the
11 case, watch anything on T.V. or read anything in
the
12 papers or periodicals about anything relating to
13 tobacco.

Monday. 14 All right. We will see you folks on
15 (The jurors exited the courtroom.)
16 THE COURT: Court will be in recess.
17 (Court was adjourned at 3:50 p.m.)
18
19
20
21
22
23
24
25

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